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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 138**

**TOWN AND COUNTRY PLANNING**

**The Town and Country Planning (Miscellaneous  
Amendments) (Scotland) Regulations 2011**

*Made - - - - 21st February 2011*

*Laid before the Scottish*

*Parliament - - - - 23rd February 2011*

*Coming into force in accordance with regulation 1*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 8(1)(b), 16(2)(b), 32, 38A(1), 43, 43A(10), 75B(3), 75F(3), 131, 267, 275 and 275A of the Town and Country Planning (Scotland) Act 1997<sup>(1)</sup> and all other powers enabling them to do so.

**Citation and commencement**

1.—(1) These Regulations may be cited as the Town and Country Planning (Miscellaneous Amendments) (Scotland) Regulations 2011 and come into force in accordance with paragraphs (2) and (3).

(2) These Regulations (other than regulation 2(5)) come into force on 1st April 2011.

(3) Regulation 2(5) comes into force on 1st October 2011.

**Amendment of the Town and Country Planning (Development Management Procedure)  
(Scotland) Regulations 2008**

2.—(1) The Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008<sup>(2)</sup> are amended in accordance with paragraphs (2) to (6).

(2) For regulation 27 (pre determination hearings) substitute—

**“Pre-determination hearings**

27.—(1) Before determining an application for planning permission for a development within the classes of development specified in paragraph (2), the planning authority are to give to the applicant and to persons who submit representations to the planning authority in respect

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(1) 1997 c.8. Sections 8 and 16, 32, 38A, 43A, 75B, 75F and 275A were inserted by sections 2, 7, 14, 17, 23, 24 and 52 of the Planning etc. (Scotland) Act 2006 (asp 17) (“the 2006 Act”). Sections 43, 267 and 275 were amended by sections 16, 19(5) and (6) and 54(16) respectively of the 2006 Act. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

(2) S.S.I. 2008/432 amended by S.S.I. 2009/220.

of that application in accordance with these Regulations an opportunity of appearing before and being heard by a committee of the authority.

(2) The classes of development prescribed for the purposes of section 38A(1) of the Act are developments within the categories of—

- (a) national developments; and
- (b) major developments which are significantly contrary to the development plan.”.

(3) In regulation 28 (decision notice)—

- (a) in paragraph (1)(b) for “person” substitute “authority, person or body”; and
- (b) in paragraph (3)(a)(v) for “58(2) or 59(4)” substitute “58(1) or 59(4)”.

(4) In regulation 35 (application to marine fish farming)—

- (a) in paragraph (3)—
  - (i) insert “and” after sub-paragraph (a);
  - (ii) omit “and” after sub-paragraph (b); and
  - (iii) omit sub-paragraph (c); and

(b) after paragraph (4) insert—

“(4A) In regulation 13 for paragraphs (1) and (2) substitute—

**2.**—“(1) Subject to paragraph (3), an application for planning permission for marine fish farm development belonging to the category of major developments must be accompanied by a design statement.

(2) Subject to paragraph (3), an application for planning permission for marine fish farm development belonging to the category of local developments where that development is situated within—

- (a) a World Heritage Site;
- (b) a National Scenic Area; or
- (c) the site of a scheduled monument,

must be accompanied by a design statement other than where the development in question comprises the alteration or extension of an existing marine fish farm.”.

(5) In Schedule 5 (consultation by the planning authority) after paragraph 14 insert—

“**15.** The Crofters Commission where the development may have an adverse effect on the continued use of land for crofting.”.

(6) In Schedule 6 (notice to accompany refusal etc.) in paragraph 1 of both Form 1 and Form 2 for “three months from” substitute “three months beginning with”.

### **Amendment of the Town and Country Planning (Appeals) (Scotland) Regulations 2008**

**3.**—(1) The Town and Country Planning (Appeals) (Scotland) Regulations 2008(3) are amended in accordance with paragraphs (2) to (6).

(2) In regulation 3(3) (notice of appeal)—

- (a) in paragraph (d) for “what procedure” substitute “what, if any, procedure”; and
- (b) after paragraph (d) insert—

“; and

- (e) where the appeal is made under section 47(1) of the Act, a copy of the decision notice”.
- (3) In regulation 4(2)(a) (intimation to planning authority and planning authority’s response) for “what procedure” substitute “what, if any, procedure”.
- (4) In regulation 13 (statement of appeal)—
  - (a) for paragraph (1) substitute—
    - “(1) The appellant must at the same time as giving notice of appeal to the Scottish Ministers under section 130(2), 169(2) or 180(2) of the Act, as the case may be, also submit a statement (“statement of appeal”) on a form to be obtained from the Scottish Ministers.
    - (1A) The statement of appeal, in addition to specifying the grounds of appeal as required by section 130(3)(a) (and as applied by section 180(3)) or 169(3) of the Act, is to give the information specified in paragraph (2).”; and
  - (b) in paragraph (2)(e) for “what procedure” substitute “what, if any, procedure”.
- (5) In regulation 14(2)(a) (intimation of appeal to planning authority and planning authority’s response) for “what procedure” substitute “what, if any, procedure”.
- (6) For regulation 17(2)(b) (called-in applications) substitute—
  - “(b) references to the appointed person—
    - (i) in Parts 3 and 7 (other than in regulation 21), rule 1(1) of the Hearing Session Rules and rule 1(1) of the Inquiry Session Rules are to be treated as references to the Scottish Ministers; and
    - (ii) in regulation 21, the Hearing Session Rules (other than in rule 1(1)) and the Inquiry Session Rules (other than in rule 1(1)) are to be treated as references to the person appointed to hold the hearing session or inquiry session, as the case may be;”.

#### **Amendment of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008**

- 4.—(1) The Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008(4) are amended in accordance with paragraph (2).
- (2) In regulation 9(3)(d) (notice of review) for “what procedure” substitute “what, if any, procedure”.

#### **Amendment of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008**

- 5.—(1) The Town and Country Planning (Development Planning) (Scotland) Regulations 2008(5) are amended in accordance with paragraphs (2) to (4).
- (2) In regulation 1(2) (interpretation)—
  - (a) after the definition of “environmental report” insert—
    - ““flood risk management plan” and “local flood risk management plan” have the same meaning as in the Flood Risk Management (Scotland) Act 2009(6);”; and
  - (b) after the definition of “local housing strategy” insert—

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(4) S.S.I. 2008/433 amended by S.S.I. 2009/220.

(5) S.S.I. 2008/426 amended by S.S.I. 2009/220.

(6) 2009 asp 6.

- “national marine plan” and “regional marine plan” have the same meaning as in Part 3 of the Marine (Scotland) Act 2010(7);” and
- (c) after the definition of “river basin management plan” insert—
- “Scottish marine area” has the meaning given in section 1 of the Marine (Scotland) Act 2010;”.
- (3) In regulation 3(1) (information and considerations)—
- (a) after paragraph (c) insert—
- “(ca) any adopted national marine plan or regional marine plan relating to parts of the Scottish marine area adjoining the strategic development plan area;” and
- (b) after paragraph (d) insert—
- “(da) any approved flood risk management plan or finalised local flood risk management plan relating to the strategic development plan area;”.
- (4) In regulation 10(1) (information and considerations)—
- (a) after paragraph (c) insert—
- “(ca) any adopted national marine plan or regional marine plan relating to parts of the Scottish marine area adjoining the local development plan area;” and
- (b) after paragraph (d) insert—
- “(da) any approved flood risk management plan or finalised local flood risk management plan relating to the local development plan area;”.

#### **Amendment of the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010**

6.—(1) The Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010(8) are amended in accordance with paragraph (2).

(2) In regulation 9(2)(a)(iii) (application of the Town and Country Planning (Appeals) (Scotland) Regulations 2008) in the definition of “period allowed for determination of the application” after “Country” insert “Planning”.

#### **Amendment of the Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010**

7.—(1) The Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010(9) are amended in accordance with paragraph (2).

(2) In regulation 9(2)(a)(iv) (application of the Town and Country Planning (Appeals) (Scotland) Regulations 2008) in the definition of “period allowed for determination of the application” after “Country” insert “Planning”.

St Andrew’s House, Edinburgh  
21st February 2011

*KEITH BROWN*  
Authorised to sign by the Scottish Ministers

(7) 2010 asp 4.  
(8) S.S.I. 2010/432.  
(9) S.S.I. 2010/433.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make minor amendments to the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008, the Town and Country Planning (Appeals) (Scotland) Regulations 2008, the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008, the Town and Country Planning (Development Planning) (Scotland) Regulations 2008, the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 and the Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010. The changes come into force on 1st April 2011 other than the new requirement for the planning authority to consult with the Crofters Commission on the terms of certain planning applications, which comes into force on 1st October 2011.

Regulation 2 amends the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008. Paragraph (2) substitutes a new regulation 27 which clarifies when a planning authority is under a duty to hold a pre-determination hearing. Paragraph (3) amends regulation 28 so as to make the wording consistent with other provisions in the Regulations and to correct a statutory reference. Paragraph (4) amends the provisions relating to the requirement to submit a design statement in connection with an application for planning permission for a marine fish farm in order to align them with similar requirements for development on land. Paragraph (5) introduces a requirement to consult the Crofters Commission in respect of certain planning applications. Paragraph (6) makes a minor change to the form of notice to be issued when refusing an application to clarify the date of commencement of the three month period within which an appeal can be made or a review requested.

Regulation 3 amends the Town and Country Planning (Appeals) (Scotland) Regulations 2008. Paragraphs (2)(a), (3), (4)(b) and (5) make minor changes to regulations 3, 4, 13 and 14 respectively to make it clear that it is possible to indicate that no further procedure is needed in connection with an appeal. Paragraph (2)(b) introduces a requirement that the appellant provides a copy of the planning authority's decision notice when appealing under section 47(1) of the Town and Country Planning (Scotland) Act 1997. The amendment made to regulation 13 by paragraph (4) clarifies the wording of the current paragraph (1). Paragraph (6) makes a minor change the way in which regulation 17 adjusts the language of the Regulations as they apply to cases to be determined by the Scottish Ministers.

Regulation 4 amends the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2008 to make it clear that it is possible to indicate that no further procedure is needed in connection with a review.

Regulation 5 amends the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 to include flood risk management plans and regional and national marine plans among the matters to be taken into consideration when preparing a strategic development plan or a local development plan. Regulations 6 and 7 respectively make minor corrections to the Town and Country Planning (Modification and Discharge of Planning Obligations) (Scotland) Regulations 2010 and the Town and Country Planning (Modification and Discharge of Good Neighbour Agreement) (Scotland) Regulations 2010.